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Nevada Bar No. 1972

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**UNITED STATES BANKRUPTCY COURT**

**DISTRICT OF NEVADA**

IN RE:

**Case No. 09-24688-LBR**

Yakubik, William Joseph, and

Chapter 11

Yakubik, Darcie Ann

Debtor.

Date: November 16, 2009

Time: 1:30 p.m.

**OPPOSITION TO MOTION OF CENTRAL MOTGAGE COMPANY  
FOR RELIEF FROM THE AUTOMATIC STAY**

William Joseph and Darcie Yakubik, the above-captioned debtors (the “Debtors”), by and through their counsel, the law firm of Timothy S. Cory & Associates, hereby file this Opposition (this “Opposition”) to the Motion of Central Mortgage Company for Relief From the Automatic Stay (the “Motion”). In support of this Opposition, the Debtor states as follows:

**I. BACKGROUND**

1. On August 12, 2009 (the “Petition Date”), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”).

1           2.       On November 19, 2009, Central Mortgage Company (“Central”) filed its  
2 Motion for relief from the automatic stay on the property commonly known as 610 Overland  
3 Drive, Henderson, Nevada (the “Property”).

4           3.       On October 15, 2009, the Debtor filed its Motion for Entry of Order  
5 Authorizing the Use of Cash Collateral and Affording Adequate Protection (the “Cash  
6 Collateral Motion”). A hearing on the Cash Collateral Motion was held November 17, 2009.  
7 The Cash Collateral Motion was granted.

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9 **II.    LEGAL ARGUMENT**

10          4.       Motion seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(2)  
11 based on a stated lack of equity in the property. However, the Motion appears to analyze the  
12 lift stay request in terms of a case under chapter 7 of the Bankruptcy Code and fails to  
13 consider elements of Section 362(d)(2)(B).

14          5.       In the Cash Collateral Motion, the Debtors state their intention to rent the  
15 Property and produce income from the Property. The Property is necessary reorganization of  
16 the Debtors.

17          6.       The Cash Collateral Motion seeks approval to expend funds on the upkeep and  
18 maintenance of the Property. The Cash Collateral Motion estimates that the Property will  
19 produce \$915.40 per month in rental income in excess of the necessary upkeep expenses. The  
20 Debtor proposes to pay to Central the states \$915.40 per month as adequate protection  
21 payments.  
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23          7.       Pursuant to Section 362(d)(2) of the Bankruptcy Code, the stay may be lifted  
24 for cause including the lack of adequate protection. Here, Central is adequately protected and  
25 the Property is necessary for effective reorganization.  
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